

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-02-NF-141
)	
SpectraSite Communications, Inc.)	NAL/Acct. No. 200332640008
Cary, North Carolina)	
)	FRN: 0006-1525-73

FORFEITURE ORDER

Adopted: August 25, 2004**Released: August 31, 2004**

By the Commission:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of thirty thousand dollars (\$30,000), to SpectraSite Communications, Inc. (“SpectraSite”), owner of antenna structure number 1018227 located in Richmond, Virginia, for willful and repeated violation of Section 303(q) of the Communications Act of 1934, as amended (“Act”),¹ and Section 17.51(b) of the Commission’s Rules (“Rules”).² The noted violation involves SpectraSite’s failure to maintain the required antenna structure obstruction lighting.

II. BACKGROUND

2. On November 4, 2002, the Commission’s Norfolk, Virginia Resident Agent Office (“Norfolk Office”) received information that a recently constructed, unpainted antenna structure located on Sesame Street in Richmond, Virginia, exhibited no obstruction lighting. On November 5, a Norfolk Office agent observed a 312.8 meter tower that appeared recently constructed and that displayed no Antenna Structure Registration (“ASR”) number, obstruction lights or paint. The Norfolk Office agent determined that no report of lighting malfunction for any antenna structure near the coordinates of the 312.8 meter tower had been reported to the Federal Aviation Administration (“FAA”) Flight Service Station (“FSS”) covering the Richmond, Virginia area.

3. During the same inspection, the Norfolk Office agent also observed a 180.9 meter tower on Sesame Street that bore ASR number 1018227 and that exhibited no lighting and had chipped and faded paint. No FSS report had been made for this tower. Commission records showed that the 180.9 meter tower’s ASR number was assigned to the 312.8 meter tower. Commission records further indicated that SpectraSite was the owner of both towers.

4. On November 6 and 7, 2002, the Norfolk Office agent again observed the 312.8 meter tower and found no lights on the structure. On November 7, the agent found that the sign with the ASR number that had been on the 180.9 meter tower was now placed against the 312.8 meter tower, leaving no ASR number on the 180.9 meter tower.

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. § 17.51(b).

5. On November 7, 2002, the Norfolk Office agent interviewed the Director of Program Management for SpectraSite Broadcast Group, who stated that SpectraSite owned both the 180.9 meter structure and the new 312.8 meter structure. The Director stated that SpectraSite's plan was to replace the shorter structure with the newer, taller 312.8 meter structure by February 1, 2003.³ The Director indicated that SpectraSite completed construction of the 312.8 meter structure on July 17, 2002.⁴ Regarding the lack of lighting on the 312.8 meter structure, the Director informed the agent that during construction, SpectraSite had maintained temporary red lighting, but he was not sure why the temporary lighting was removed. The Director also stated that SpectraSite's tower crew had removed the temporary lighting sometime around the second week in October. Finally the Director stated that he did not know why the permanent lights were not exhibited. On November 7, 2002, after the inspection, the Norfolk Office agent received information from SpectraSite that it had finished the lighting connections and the antenna structure was lighted on that date.

6. On October 27, 2003, the Commission issued a *Notice of Apparent Liability for Forfeiture* ("NAL")⁵ for a \$120,500.00 forfeiture to SpectraSite for willful and repeated violations of Sections 303(q) of the Act, and Sections 17.4(a) and 17.51(b) of the Rules.⁶ In addition, the Commission required that SpectraSite file a report, pursuant to Section 308(b) of the Act,⁷ detailing its plan for ensuring that all of its antenna structures are in compliance with the Commission's Rules, and its plan for maintaining future compliance.⁸ SpectraSite filed a response to the NAL on December 1, 2003. In its response, SpectraSite states that the 180.9 meter tower was never required to be registered under FAA regulations, and in any event SpectraSite is not the owner of that tower. SpectraSite also argues that the forfeiture for its failure to light the 312.8 meter tower should be reduced because SpectraSite took remedial measures to correct the lighting outage prior to notification from the Commission, and that in fact, it had previously made an appointment with contractors for November 7, 2002, to restore the tower's lighting.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁹ Section 1.80 of the Rules,¹⁰ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999). In examining SpectraSite's response, Section 503(b) of

³ The 180.9 meter structure was originally registered with ASR number 1018227. SpectraSite's Director provided a copy of FCC Form 854 "Application for Antenna Structure Registration" filed on January 3, 2002. The application was annotated "Modification of a registered antenna structure."

⁴ The Director provided a copy of FAA Form 7460-2 "Notice of Actual Construction or Alteration." He also provided a copy of the FAA's *Determination of No Hazard to Air Navigation* that cleared the construction of the 312.8 meter structure provided that the structure exhibited obstruction lighting, FAA, *Determination of No Hazard to Air Navigation*, Aeronautical Study Number 99-AEA-0874-OE, issued May 24, 2000.

⁵ *SpectraSite Communications, Inc.*, 18 FCC Rcd. 22799 (2003).

⁶ 47 C.F.R. §§ 17.4(a); 17.51(b). The NAL proposed a forfeiture of \$87,500 for violation of Section 17.4 and a forfeiture of \$33,000 for violation of Section 17.51(b).

⁷ 47 U.S.C. § 308(b).

⁸ SpectraSite complied with this request with a report filed on December 30, 2003, and supplemented on April 23, 2004. It also met with Enforcement Bureau staff to reiterate the importance of its compliance efforts. Accordingly, we find that SpectraSite has complied with the NAL's requirement to detail its current and future compliance efforts.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹

8. Section 17.4(a) of the Rules requires that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission.¹² In the *NAL*, the Commission based the proposed forfeiture assessment regarding the 180.9 meter tower on its belief, based on statements made by a SpectraSite manager, and on the Commission's records, that SpectraSite owned that tower. We now conclude that, notwithstanding its filings to the Commission regarding the 180.9 meter tower and statements by the SpectraSite manager, SpectraSite was not the owner and therefore was not responsible for the registration of the tower.¹³ Accordingly, based on our review of SpectraSite's response to the *NAL*, we conclude that SpectraSite did not willfully and/or repeatedly violate Section 17.4(a) of the Rules with regard to the 180.9 meter tower. We will therefore cancel the proposed forfeiture for that violation.¹⁴ We caution SpectraSite to be more careful in the future not to file tower registration materials for towers it does not own.

9. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission. Section 17.21 of the Rules states that painting and lighting are required for antenna structures that exceed 60.96 meters, except when it is shown by the applicant that the absence of such painting and lighting would not impair the safety of air navigation.¹⁵ Section 17.51(b) of the Rules requires that all high intensity and medium intensity obstruction lighting shall be continuously exhibited unless otherwise specified. Pursuant to the conditions of its ASR, SpectraSite's 312.8 meter antenna structure was required to exhibit high intensity white obstruction lighting. SpectraSite completed construction of this structure on July 17, 2002.¹⁶ During the Norfolk Office agent's inspections on November 5, 6, and 7, 2002,¹⁷ SpectraSite failed to exhibit any of the required obstruction lighting on its 312.8 meter structure. Accordingly, we conclude that SpectraSite willfully¹⁸ and repeatedly¹⁹ violated Section 17.51(b) of the Rules.

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² SpectraSite completed the Commission's form for modification of the 180.9 meter tower's location, thus indicating that it owned the tower, without clarifying that it acted as a contractor for the owner.

¹³ SpectraSite provided contractual documents between itself and the tower owner that indicated the extent of SpectraSite's responsibilities regarding the 180.9 meter tower. According to a letter it filed February 27, 2004, SpectraSite dismantled the 180.9 meter tower on behalf of the tower's owner, Commonwealth Public Broadcasting Corporation, on February 23, 2004.

¹⁴ Based on our cancellation of the proposed forfeiture of \$87,500 on this point, we find that there is no need to address the arguments SpectraSite raised regarding whether the 180.9 meter tower should have been registered.

¹⁵ 47 C.F.R. § 17.21.

¹⁶ SpectraSite's response at p. 7.

¹⁷ We note that according to the Norfolk agent's on-site interview with a SpectraSite representative, the tower lighting was removed by the SpectraSite tower crew sometime around the second week in October 2002.

¹⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁹ As provided by 47 U.S.C. § 312(f)(2), "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." The *Conference Report* for Section 312(f)(2) indicates that

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10. SpectraSite seeks reduction of the proposed forfeiture for violation of Section 17.51(b) of the Rules because it had taken steps to remedy the lighting outage situation before the Commission inspected the tower. In its response to the *NAL*, SpectraSite states that it had completed the entire required lighting system for the 312.8 meter tower by July 28, 2002, except for a bridge that would house permanent wiring to electrical systems.²⁰ SpectraSite avers that there were temporary electrical connections installed, and that it “was aware that the temporary electrical connections were more vulnerable to outages.”²¹ Construction for a permanent bridge was completed on October 25, 2002. Installation of permanent conduit and wire had been scheduled for November 7, 2002, the third day that the Norfolk Office agents inspected the station.

11. Based on our review of the record, we find that SpectraSite is entitled to a reduction in its forfeiture for good faith.²² SpectraSite had identified and was attempting to correct the electrical problems that led to tower lighting outages, and in fact had scheduled the repairs prior to the agent’s inspection. Accordingly, we find that a reduction in the forfeiture amount from the thirty-three thousand dollars (\$33,000) imposed by the *NAL* to thirty thousand dollars (\$30,000) is warranted for SpectraSite’s good faith efforts to comply with the Rules.²³

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act, and Section 1.80(f)(4) of the Rules,²⁴ SpectraSite Communications, Inc.. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of thirty thousand dollars (\$30,000) for willfully and repeatedly violating Section 17.51(b) of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁵ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332640008 and FRN 0006-1525-73. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁶

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Congress intended to apply this definition to Section 503 of the Act as well as Section 312. *See* H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *Southern California Broadcasting Co., supra*.

²⁰ SpectraSite’s response, *supra*, at p. 7.

²¹ *Id.*

²² 47 C.F.R. § 1.80(b); *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”), 12 FCC Rcd 17087, 17101 (good faith is a downward adjustment factor).

²³ *See Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003); *recon. denied* 18 FCC Rcd 25481 (2003) (good faith reduction justified where licensee identified violation and ordered equipment to fix it prior to Commission inspection). *See also Barinowski Investment Co.*, 18 FCC Rcd 25,067 (Enf. Bur. 2003); *NetCom Technologies*, 16 FCC Rcd 9524 (Enf. Bur. 2001).

²⁴ 47 C.F.R. § 1.80(f)(4).

²⁵ 47 U.S.C. § 504(a).

²⁶ *See* 47 C.F.R. § 1.1914.

17. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to SpectraSite Communications, Inc., 100 Regency Forest Drive, Cary, North Carolina, 27511, and its counsel, Janet Fitzpatrick Moran, Esq., Patton Boggs LLP, 2550 M Street, N.W., Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch
Secretary